In the Supreme Court of the United States

OCTOBER TERM, 1968

No. 906

THRIFT DRUG COMPANY OF PENNSYLVANIA,
PETITIONER

v.

NATIONAL LABOR RELATIONS BOARD

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT

MEMORANDUM FOR THE NATIONAL LABOR RELATIONS BOARD

---

1. On August 24, 1966, the Retail Clerks Union, which had obtained union authorization cards from 10 out of the 15 employees in the unit, requested recognition as the representative of the employees at petitioner's Kenosha, Wisconsin, store (Pet. App. 10a). Petitioner replied that it doubted whether the Union represented a majority of employees, but agreed to a Board election (Pet. App. 11a). However, in the period preceding the election the Com-

pany engaged in an extensive program of restraint and coercion, which included interrogating employees about their union activities, threatening them with reprisals if they selected a union representative, and promising them benefits if they rejected the union (Pet. App. 28a-33a). The union lost the election by a single vote, 8 to 7 (Pet. App. 11a).

The Board found that the Company's conduct during the election campaign violated Section 8(a)(1) of the Act, 29 U.S.C. 158(a)(1), and warranted setting the election aside (Pet. App. 42a-43a, 40a-41a). Having considered and rejected Company challenges to the authorization cards, including the contention that certain of the cards were obtained under the misrepresentation that they would be used only for the purpose of securing a Board election (Pet. App. 19a-28a), the Board also found that the union had valid authorization cards from a majority of the employees when it requested recognition (Pet. App. 28a). In view of the Company's extensive unfair labor practices, the Board concluded that its refusal to recognize and bargain with the union was not motivated by a good faith doubt as to the union's majority status (Pet. App. 36a-38a), but violated Section 8(a)(5) and (1) of the Act, 29 U.S.C. 158(a)(5) and (1) (Pet. App. 41a, 43a). The Board ordered the Company to cease and desist from the unfair labor practices found, and to bargain with the union upon its request (Pet. App. 45a-47a).

The court of appeals sustained the Board's findings, and enforced its order (Pet. App. 1a-6a).

2. The second and third questions in the petition do not warrant review by this Court. The former challenges the Board's position that, where an authorization card unambiguously designates the union as bargaining agent (as did the cards here), it will be invalidated only if the signer was coerced or it was represented to him that the card's sole purpose was to secure a Board election. *Cumberland Shoe Corp.*, 144 NLRB 1268, enforced, 351 F. 2d 917 (C.A. 6). This issue was raised in three cases in which petitions for certiorari were denied last Term. *National Labor Relations Board* v. *Crawford Mfg. Co.*, No. 1050, 390 U.S. 1028; *Preston Products Co.* v. *National Labor Relations Board*, No. 1367, 392 U.S. 906; *Bryant Chucking Grinder Co.* v. *National Labor Relations Board*, No. 1324, 392 U.S. 908. As in *Atlas Engine Works* v. *National Labor Relations Board*, No. 598, this Term (Memorandum for the respondent, pp. 3-4), the Board sees no reason why review of this issue is any more warranted now than it was last Term. The third question, challenging the admittance of two authorization cards into evidence without authentication by the signer or a witness, concerns a matter of limited significance. Moreover, as the court below pointed out (Pet. App. 3a-4a n. 3), the question is academic; exclusion of the two cards thus challenged would not deprive the Union of its majority.

The remaining questions, however, raise issues similar to those in *National Labor Relations Board* v. *Gissel Packing Co.*, No. 573, this Term; *Food Store*

Employees Union, Local No. 347 v. *Gissel Packing Co.*, No. 691, this Term; and the *Sinclair Company* v. *National Labor Relations Board*, No. 585, this Term, in which this Court has granted certiorari. Thus, the Board found as a fact, and the court below agreed, that the Company's refusal to recognize and bargain with the union was motivated not by a mistrust of authorization cards, as the Company claimed, but by a desire "to defeat unionization regardless of the wishes of the employees and completely without regard to the law" (Pet. App. 6a), as shown by its subsequent unfair labor practices. Under the Fourth Circuit ruling in *Gissel, supra*, it is doubtful that the Board's finding would have been deemed sufficient to support its conclusion.

Although the Board acknowledges that the correctness of the decision below will be governed in this respect by this Court's decision in the above cases, and that the issues involved have the importance warranting a grant of certiorari, it believes that these issues will be adequately presented by the cases already set for argument, and that there are no special circumstances in this case warranting separate consideration.

Accordingly, it suggests that the Court should defer ruling on the present petition until it decides Nos. 347, 691, and 585.

Respectfully submitted.

ERWIN N. GRISWOLD,
Solicitor General.

ARNOLD ORDMAN,
General Counsel,

DOMINICK L. MANOLI,
Associate General Counsel,

NORTON J. COME,
Assistant General Counsel,
National Labor Relations Board.

JANUARY 1969.

☆ U. S. GOVERNMENT PRINTING OFFICE: 1969 330820 423